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DEPARTMENT FOR M AND P
DEPT. ALSO FOR NEA/FO - HUDSON AND NEA/MAG
DEPT. ALSO FOR A/OPR/OS FOR CAMERON
TREASURY FOR IA/MDB FOR MORRIS

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TAGS: ASCH PREL AFDB PGOV TS
SUBJECT: AMERICAN SCHOOL TAX CRISIS DEEPENS: NEXT STEPS

REF: A. TUNIS 0156
¶B. TUNIS 0001
¶C. 08 TUNIS 1135
¶D. 07 TUNIS 1489
¶E. TUNIS-NEA/MAG E-MAILS

Classified By: Ambassador Robert F. Godec, Reason 1.5 (b) and (d)

Summary

¶1. (C) The American Cooperative School of Tunis (ACST) tax dispute has reached a critical point and the school faces possible closure. The Ministry of Finance has issued its final tax decree, which requires ACST to pay $6.8 million in 60 days, money it does not have and probably cannot borrow. The Ambassador met with senior Ministry of Foreign Affairs officials and delivered a clear message that the GOT's actions may force the school to close, contravene its commitments and have serious consequences for US-Tunisian relations. The Ambassador also met with African Development Bank President Kaberuka, who will again approach the Prime Minister and other senior GOT officials. The Ambassador will also seek a meeting with Presidential Advisor and Minister of State Abdelaziz Ben Dhia. In the meantime, the school has been considering options with its Tunisian lawyers.

¶2. (C) In this cable, we review developments, and lay out the steps the Embassy and school will take. In brief, we will ratchet up the political pressure on the GOT to reverse course while making contingency plans if it does not do so. We ask for the Department's support and assistance. End summary.

Latest Developments: No Good News

Government Issues Final Tax Decree

¶3. (U) A March 10 meeting between an ACST delegation and the Director General of Fiscal Controls of the Ministry of Finance (MOF) ended without clear result (see ref A). The two sides exchanged views, with ACST noting it was prepared to pay a portion of the tax bill, but not the majority of it. The school delegation maintained it has tax exemptions based on 50 years of practice, diplomatic exchanges between the Tunisian and US Governments, and the 1963 Educational and Cultural Agreement (cited by the GOT as recently as 2008 to justify VAT exemptions). The MOF Director General held firm to the Ministry's position. Both sides agreed on the need

for further guidance on the status of the school, with the MOF expressly acknowledging a need for direction from the Ministry of Foreign Affairs (MFA). The Director General also said the final tax decree would be put on hold until guidance could be obtained.

¶4. (U) Despite the promise, on March 19, the school received the final tax decree, which is the MOF's last word. There are no further administrative appeals and the remaining option is to file suit in Tunisia's courts. In the decree, the MOF puts the school in the category of profit-making institutions and imposes stiff penalties, particularly in regard to withholding taxes for foreign employees and VAT exemptions. The decree maintains the school owes the entirety of the original 9.1 million dinar (approximately US $6.8 million) finding, and must pay within 60 days unless a court case is filed. The decree also states, however, that a large portion of the bill -- 4 million dinar or over US $3 million -) is not subject to deferment upon appeal to the courts, or to payment by installments, and so is due in 60 days, period. (NB. ACST currently has approximately $1 million in reserve funds.)

African Development Bank Will Help

¶5. (SBU) On March 24, the Ambassador briefed African Development Bank (AfDB) President Donald Kaberuka on the latest developments. Kaberuka was clearly alarmed by the potential closure of the school and by the possibility, even if the school remains open, of major tuition hikes. With 200 students in the school with an 80 percent subsidy from the AfDB, the bank would be hard-pressed to pay its share of a major tuition increase. AfDB employees would also find a fee hike very difficult. Kaberuka said he would redouble his efforts to pursue the matter with the highest levels of the GOT, including the Prime Minister. He added, however, that Tunisia is a sovereign country and there may be no choice but to pay or close the school.

Pressing the MFA

¶6. (C) During a meeting March 26 with MFA Chief of Staff Mahmoud Khemiri and the Minister's Special Assistant Mehrez Ben Rhouma, the Ambassador spoke at length about the tax bill and the school's situation. He stressed that the United States and Tunisia are close to a crisis over this matter and the GOT's refusal to grant a tax exemption for equipment and work being done at the North Africa American Cemetery and Memorial. (Note: We report on the cemetery tax issue by septel.) The Ambassador made clear the school does not have the funds to pay the tax bill and probably cannot borrow the money. If the GOT does not change course, there may be no choice but to close the school. The Ambassador said such a development would have a serious effect on our bilateral relationship at the beginning of the new US Administration. He stressed that the school has been associated with the American Embassy for 50 years and been subject to diplomatic correspondence throughout that time. It was inappropriate for the GOT to take unilateral action without negotiating with the US Government. The Ambassador urged, again, that the GOT immediately begin negotiations with the Mission on a bilateral agreement to settle the school's status.

¶7. (C) Khemiri suggested that the Embassy could guarantee a loan for the school and noted that the Ministry of Finance is very powerful. The Ambassador said the Embassy could not guarantee a loan, although it was possible the Overseas Private Investment Corporation (OPIC) might do so. (NB. OPIC has since declined to do so. See below.) When the Ambassador asked if there was a political message in the GOT's actions, Khemiri jumped in to flatly deny there was any such motivation, saying this is a technical issue. The Ambassador noted the publicity that the closure of the school in Syria received, adding if the Tunis school closed it too would receive international media attention. The Ambassador added that the GOT should not underestimate the potential

reaction in Congress, in addition to that of the Administration. He informed them of his intention to seek a meeting with Presidential Advisor and Minister of State Ben Dhia and said AfDB President Kaberuka would raise the matter with the Prime Minister again.

What Now?

¶8. (SBU) The Ministry of Finance's action leaves the school and Embassy confronting an urgent situation. We are now taking steps to ratchet up the pressure on the GOT and to plan for the possibility we may have to close the school. The visit March 25-27 of Beatrice Cameron of the Office of Overseas Schools was a valuable opportunity to review our plans and consult on strategy. As we move forward, we will need significant support from the Department. Below, we outline what we are doing and suggest possible steps by the Department.

Steps by the School

¶9. (SBU) Here is what ACST is doing, in close consultation with the Mission:

A) Financial situation. The school is assessing the financial impact of the tax bill. ACST has explored the option of a loan, but private banks have made clear a guarantee would be necessary. On March 27, OPIC, which backs an existing ACST loan of $2.5 million, declined the request for a new guarantee. The remaining options are an AFDB loan (unlikely) or an agreement by the GOT to stretch out payments. Even if a loan or payment arrangement is possible, however, we estimate tuition would have to be raised by US $10,000 per student (to approximately $28,000 annually) for a high school student. In addition to hiking tuition, the school would have to cut operations and activities. Moreover, such a tuition increase would be beyond the means of many families whose children are now in the school and the resulting drop in enrollment would only exacerbate the financial situation.

B) Briefing the parents. The ACST school board is fully apprised of the tax situation, and knowledge of it is gradually spreading. ACST has a general meeting with all parents scheduled for April 15, and the board and Embassy officials will have to brief all parents at that session. Immediately prior to the general meeting, if the tax issue has not been resolved, the board will send a letter to all parents to apprise them of the situation.

C) Legal case. ACST, together with its lawyers, is preparing to file suit in Tunisia's courts. Given that the judicial system is not independent, we believe this is a last resort and have advised ACST to proceed only if all political options have been exhausted. ACST will not file unless and until the Embassy gives a green light to do so.

D) Contingency plans: ACST and the Mission will begin to discuss contingency plans for the closure of the school. Regardless of the outcome, however, we expect all students to be able to complete this academic year.

Steps by the Mission

¶10. (C) Here is what the Mission is doing:

¶A. Ben Dhia meeting. The Ambassador will seek a meeting with Minister of State Ben Dhia on the school and hand him a non-paper (draft provided to the Department by e-mail). Comment. We believe this meeting will be a key test of whether the GOT will stand down and commence negotiations on a bilateral agreement. End comment.

¶B. Other GOT meetings. If the Ben Dhia meeting does not

produce results, the Ambassador will request a meeting with the Prime Minister. If the meeting with the Prime Minister, and subsequent interventions by the Department (see para 11), produce less than satisfactory results, we would seek instructions from the Department for the Ambassador to seek a meeting with President Ben Ali. The Ambassador is also reaching out to other influential Tunisians who are close to the GOT to apprise them of the situation and seek support.

¶C. COM meeting. The Ambassador will update key Ambassadors in Tunis (e.g., the German, French and British Ambassadors) on the latest developments and ask them again to approach the GOT. Several have previously agreed to do so.

¶D. Contingency planning: While we will continue to do everything possible to avoid closure, we now believe the situation demands prudent planning. Obviously, there are a variety of short and long term implications for the Mission. We will lay these out in future cables and e-mails to the Department.

Requested Steps by the Department

¶11. (C) We ask the Department to consider the following actions. In each case, we recommend that the Department raise the school and cemetery tax issues together.

¶A. Tunisian Ambassador appointments. As NEA has agreed to do, we ask that tax issues be a top point in all meetings between USG officials and new Tunisian Ambassador Mansour.

¶B. Under Secretary intervention: If we do not receive a clear indication from Minister Ben Dhia that he will help resolve the problem, we will need to seek direct intervention by the Department with the Minister of Foreign Affairs. As a first step, we suggest a telephone call by the Under Secretary for Political Affairs to Minister Abdallah.

¶C. Secretary intervention: If the tax matters continue to remain unresolved, we believe a letter from the Secretary to President Ben Ali (or possibly Minister Abdallah) would be another useful step. We may ask that the Ambassador be instructed to deliver the letter in person to Ben Ali.

Media Plan

¶12. (SBU) The Mission is drafting possible media guidance on the school (and cemetery) tax matters. We will forward the drafts to NEA for review. In addition, if it becomes apparent that private communications with the GOT are not producing action, we believe we should consider the possibility of a public statement. Such a statement, however, should be a last resort as it may well make it more difficult for the GOT to reverse course.

Comment: Consequences and Why?

¶13. (C) The closure of ACST, or even a drastic increase in tuition, would be serious blow to the English-speaking international community in Tunis. It would leave 537 children of 69 nationalities (including 44 US Government dependents in September 2009) with no alternative English-language education options in Tunisia. AfDB President Kaberuka has said the school situation might well force the bank to speed up its departure from Tunis. Several international businesses (e.g., British Gas, Tunisia's largest foreign investor) would also be compelled to reassess their operations here. And, of course, no ACST would also mean a major change in US Mission operations, and have an impact (for example) on the viability of the FSI advanced Arabic school.

¶14. (C) So why is the GOT pursuing its tax action against the school? Despite the denial by MFA officials (who are

unlikely to be informed about intentions in Carthage), the action may be related to GOT pique over US democracy and human rights policies. Or, it may be simpler. The President's wife, Leila Trabelsi, was reportedly a founding investor in the relatively new International School of Carthage. Mrs. Ben Ali was subsequently reported to have sold her share, but her reputation is still linked to the success of the school, which benefited from direct GOT financial help. The school may now be seeking more paying students. Finally, perhaps, this really is no more than the Ministry of Finance seeking revenue. Whatever the GOT's reasons, we do not believe the government fully understands the implications of its actions. An early departure of the AfDB and the down-sizing of foreign Missions and international businesses would have serious consequences for Tunisia, including a financial impact that would far outweigh any potential tax revenue from the school.

¶15. (C) Regardless of the GOT's motivations, our response to its actions must be political and immediate. The GOT is acting unilaterally in contravention of its commitments to us and its actions are about to harm US interests. We must push back, and push back hard.
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